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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION
1991 MAR 12 PM 3:07
DOCKET SECTION

In the matter of

ADVANCE NOTICE OF PROPOSED RULEMAKING
CONCERNING PASSENGER MANIFEST
INFORMATION (NOTICE 91-2)

DOCKET 47383

MOTION AND CONSOLIDATED REPLY
COMMENTS OF AIR-INDIA

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United States Counsel

March 12, 1991

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MOTION

Air-India respectfully requests leave, pursuant to Rule 4(f) of the Department's Rules of Practice, to file its comments replying to those of the Air Transport Association and several other foreign carriers submitted in response to the Department of Transportation's Advanced Notice of Proposed Rulemaking (ANPRM) published in the Federal Register on January 31, 1991. The ANPRM itself expressly acknowledges **that the** Department would accept comments filed after the February 19, 1991 deadline. Accordingly, in view of the additional time required for Air-India to coordinate its response, Air-India believes that good cause certainly exists for acceptance and consideration of its reply comments set forth below.

REPLY COMMENTS

Air-India joins in support of those comments filed by, inter alia, British Airways, Lineas Aereas Paraguayas, Japan Air Lines and Swissair. Air-India, however, must take exception to the comments of the Air Transport Association (ATA) particularly insofar as ATA ". . . strongly believe(s) that passenger manifest information requirements should be imposed equally upon U.S. and foreign carriers." Air-India's opposes the imposition of the new passenger manifest requirements on smaller foreign carriers because: (1) the U.S. Congress recognized that excluding foreign carriers in the proposed regulation would be entirely appropriate which is certainly the case for the smaller carriers; and (2) the considerable burdens the new requirement would impose on foreign carriers the size of Air-India would be completely disproportionate to the intended benefits.

The legislative history and wording of the Aviation Security Improvement Act of 1990, P.L. 101-604, November 16, 1990, ("Security Act") makes a compelling case for the proposition that Congress did not intend for the Department to extend the passenger manifest requirement to foreign carriers without a comprehensive evaluation of the burdens the regulation would impose on foreign carriers. Specifically, the Security Act provides that the Secretary of Transportation is to "consider" extending the passenger manifest requirement to foreign carriers. What it does not say is that the Secretary must extend the

requirement to foreign carriers. The permissive, rather than mandatory, language of the Security Act should be compared with predecessor legislation passed by the House (H.R. 5200) which had proposed to make mandatory the passenger manifest requirement for all carriers, foreign as well as domestic.

Accordingly, the Department should carefully weigh the pros and cons of automatically extending the passenger manifest requirement to foreign carriers. When such an evaluation is made, Air-India respectfully believes that the Department should conclude that for many foreign carriers, particularly those which do not have state-of-the-art computerized check-in systems, the burdens of this requirement on those carriers would far outweigh its benefits. All carriers are currently facing severe economic pressures, but these pressures have had a particularly serious effect on many of the smaller foreign carriers. In these circumstances, the availability of the financial resources that would be required to upgrade the smaller carriers' check-in systems is uncertain.

In making its comparison of the costs and benefits of the proposed requirements vis-a-vis the smaller foreign carriers, the Department should be mindful that this requirement is only one of several potentially costly proposed regulations currently under consideration. These include the proposal to require that all foreign carriers' security programs be made similar to those of the U.S. carriers and the phase out of Stage 2 aircraft

commencing in 1994. The Department should be particularly sensitive to the cumulative financial burdens of these requirements on the smaller foreign carriers.

Air-India is also concerned about the departure delays that would result from having to collect passport numbers, the names of contacts for all passengers and the telephone numbers of all such contact individuals. The ATA has estimated that it will take an average of 60 seconds per passenger to obtain the newly required information. That figure also appears to assume that each passenger will readily volunteer the information without delay or objection. It is more likely that a number of passengers on each flight may be reluctant or may simply refuse to provide this information. Incidents of that type will undoubtedly contribute to additional delays and further difficulties. Even if the added delay per departure created by the new requirement were limited to only 60 minutes -- a highly optimistic estimate for a B-747 departure accommodating 390 passengers, it would appear that the economic consequences of the new requirement would be staggering on an industrywide basis.

It is also an inescapable fact that not all carriers are similarly situated from the standpoint of resources and that the disparity between the mega-carriers and the smaller carriers is growing in many instances. Smaller foreign carrier such as Air-India would find it extremely difficult to the comply with this requirement. Therefore, if the Department is still inclined to

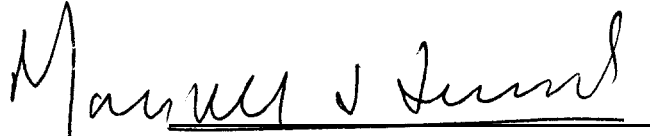
- impose this new requirement on foreign carriers, Air-India would suggest that the Department consider making a distinction between the larger and smaller foreign carriers. Specifically, the Department should adopt a benchmark of \$1 billion in annual revenues to distinguish between the larger and smaller foreign carriers. That benchmark has long been used by the Department to distinguish between national and major U.S. carriers for a number of purposes. Implicit in that distinction has been the recognition that carriers with annual revenues below \$1 billion do not have computerized accounting systems which are equivalent to those used by the major carriers.

The \$1 billion threshold is also low enough so that virtually all of the larger foreign carriers would be included if the Department adopted that benchmark. The inclusion of all U.S. carriers along with the larger foreign carriers would mean that the vast preponderance of all international traffic to and from the United States would therefore fall within the ambit of the new requirement. Conversely, exclusion of the smaller foreign carriers would not significantly dilute the intended benefits of the new requirement.

WHEREFORE, Air-India would respectfully suggest that the Department of Transportation, if the Department decides to extend the new passenger information manifest requirement to foreign

carriers, distinguish between those foreign carriers with annual revenues below \$1 billion and exclude that group of smaller foreign carriers from the new requirement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marshall S. Sinick", written over a horizontal line.


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DATED: March 12, 1991

CERTIFICATE OF SERVICE

The foregoing Motion and Consolidated Reply have been sent
by first class mail to the following:



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March 12, 1991

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